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Human rights situations that require the Council's attention

Written statement* submitted by Lawyers' Rights Watch Canada, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 May 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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China: Human rights advocates suffer detention, ill-treatment and trials in violation of international law

In July 2015 the People's Republic of China (China) began a campaign (the 709 Crackdown) to repress legitimate human rights advocacy by human rights lawyers and other advocates (HRDs). Criminal laws and executive-controlled courts are used to silence HRDs through arbitrary detentions, illegitimate charges, denial of due process, and prohibited treatment. During the 709 Crackdown, at least 321 HRDs have been subjected to harassment, interrogation, arbitrary detention, illegitimate criminal charges, enforced disappearances, torture and ill-treatment, unfair trials before executive-controlled courts, denial of due process, wrongful convictions and other violations.[1] Seven defenders detained during the 709 Crackdown remain imprisoned.[2] Targeting and arbitrary detention of HRDs continues, and an increasing number of human rights lawyers face disbarment for their lawful advocacy.[3] HRDs effectively advocating for clients or causes unpopular with China, are especially vulnerable to severe rights violations including lengthy prison sentences.[4]

These violations represent a continuing pattern of systematic violations of China's international human rights law obligations arising from: membership in the United Nations (UN); membership on the UN Human Rights Council (Council); the Universal Declaration of Human Rights (UDHR); the International Covenant on Civil and Political Rights (ICCPR), signed 5 October 1998; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), ratified 4 October 1988. LRWC calls on Council to fulfil its duty to protect fundamental human rights in China, and recommends that Council urge China to:

- Ensure the immediate release of and withdrawal of charges against all HRDs charged or detained;
- Abolish the use of Residential Surveillance at a Designated Place (RSDP);
- Take steps to remedy the systematic and widespread violations against HRDs identified in this report;
- Ensure effective investigations of allegations of torture or ill-treatment of HRDs.

Case examples

1. Wang Quanzhang,[5] Lawyer - Subversion of State Power (SOSP) - no bail hearing -trial pending.
   - Advocacy in cases involving freedom of religion or belief (e.g. Falun Gong).
   - 10 July2015: Detained.

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1 China Human Rights Lawyers Concern Group (CHRLCG), "'709 Crackdown'? Latest Data and Development of Cases as of 1800 17 May 2018," CRHLCG, 18 May 2018 http://www.chrlawyers.hk/en/content/%E3%80%90%E2%80%9C709-crackdown%E2%80%9D%E3%80%91-latest-data-and-development-cases-1800-17-may-2018

2 Ibid.

3 Human Rights Watch, China: Release Human Rights Lawyers: Restore Licenses Revoked for Criticizing Government, HRW, 15 February 2018, https://www.hrw.org/news/2018/02/15/china-release-human-rights-lawyers; IAPL Monitoring Committee on Attacks on Lawyers, China: Lawyer Xie Yanyi assaulted, detained during impending disbarment proceedings, IAPL, 18 May 2018, https://defendlawyers.wordpress.com/2018/05/18/china-lawyer-xie-yanyi-assaulted-detained-during-impending-disbarment-proceedings/ Australian Centre on China in the World. "China: A Hearing With Chinese Characteristics: How the Beijing Lawyers' Association Helps Persecute Human Rights Lawyers," IAPL Monitoring Committee on Attacks on Lawyers, 21 May 2018, https://defendlawyers.wordpress.com/2018/05/21/china-a-hearing-with-chinese-characteristics-how-the-beijing-lawyers-association-helps-persecute-human-rights-lawyers/

4 Amnesty International, It's been one year since China began its assault on human rights lawyers and activists across the country on 9 July 2015, July 2017, https://www.amnesty.org/en/latest/campaigns/2016/07/one-year-since-chinas-crackdown-on-human-rights-lawyers/; Truth in China, 1,528 Mainland Chinese Retaliated Against for Filing Criminal Complaints Against Jiang Zemin, Collection of Evidence of Live Organ Harvesting from Falun Gong Practitioners by CCP, 27 September 2015, https://investigating.wordpress.com/2015/09/27/1528-mainland-chinese-retaliated-against-for-filing-criminal-complaints-against-jiang-zemin/.

5 Yang Jianli, "We don't even know if this heroic Chinese lawyer is alive or dead," *Washington Post*, 26 February 2018, https://www.washingtonpost.com/news/democracy-post/wp/2018/02/26/we-dont-even-know-if-this-heroic-chinese-lawyer-is-alive-or-dead/?utm_term=.0bdbc05c2856

- RSDP: 6 months.
- 8 January 2016: Formally arrested
- 14 February 2017: Indicted.

Enforced disappearance, struck by electroshock weapons, no communication or lawyer's visits.

2. Jiang Tianyong,[6] Lawyer - Inciting Subversion of State Power (ISOSP) - no bail hearing - 2-year imprisonment, serving sentence
   - Provided legal defense for some human rights lawyers arrested in the 709 crackdown.
   - 22 November 2016: Detained.
   - RSDP: 6 months.
   - 31 May 2017: Formally arrested.
   - Unknown: Indictment.
   - 22 August 2017: Tried.
   - 21 November 2017: Convicted.

   Enforced disappearance, purported confession coerced by torture, denied lawyer of his own choice.

3. Zhou Shifeng,[7] Lawyer - SOSP - no bail - 7-year imprisonment, serving sentence
   - Defended those charged in politically sensitive cases since 2001 including persons accused of criticizing the government.
   - 9 July 2015: Detained.
   - RSDP: 6 months.
   - 15 July 2016: Indicted.
   - 4 August 2016: Tried and convicted on same day.

   Enforced disappearance, denied lawyer of his own choice, serious medical conditions.

4. Hu Shigen,[8] HRD – SOSP - no bail - 7½-year imprisonment, serving sentence
   - Advocated democracy, rule of law and human rights including freedom of religion or belief.
   - 11 July 2015 detained.
   - RSDP 6 months.
   - 15 July 2016: Indicted.
   - 3 August 2016: Tried and convicted on same day.

   Enforced disappearance, critical medical conditions.

5. Wu Gan,[9] HRD - ISOSP - no bail - 8-year imprisonment, serving sentence
   - human rights defender supporting harassed lawyers.
   - 20 May 2015: Detained.
   - 3 July 2015: Formally arrested.
   - 23 December 2016: Indicted.

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6 UN Office of the High Commissioner for Human Rights, China: UN experts concerned about health of jailed rights lawyer Jiang Tianyong," Statement of Mr. Philip Alston, Special Rapporteur on extreme poverty and human rights; Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders; Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Mr. Diego Garcia-Sayán, Special Rapporteur on the independence of judges and lawyers; Mr. José Antonio Guevara Bermúdez, Chair-Rapporteur of the Working Group on Arbitrary Detention, and Mr. Bernard Duhaime, Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances. Statement endorsed by Dainius P?ras, Special Rapporteur on the right to health. http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22890&LangID=E

7 Front Line Defenders, Lawyer Zhou Shifeng sentenced to 7 years in prison, Front Line Defenders, 4 August 2017, https://www.frontlinedefenders.org/en/case/lawyer-zhou-shifeng-sentenced-7-years-prison

8 Chinese Human Rights Defenders, Hu Shigen: Under Medical Watch, 22 January 2016 https://www.nchrd.org/2016/01/hu-shigen-%E8%83%A1%E7%9F%B3%E6%A0%B9/

9 Chinese Human Rights Defenders, Wu Gan, 11 March 2016, https://www.nchrd.org/2016/03/wu-gan/; Chinese Human Rights Defenders, Submission to UN on Wu Gan, Wang Fang, and Yin Xu'an, 17 April 2018, https://www.nchrd.org/2018/04/submission-to-un-on-wu-gan-wang-fang-and-yin-xuan-april-17-2018/

- 14 August 2017: Tried.
- 26 December 2017: Convicted.
- April 2018: Verdict upheld on appeal.

Prolonged fatigue interrogation and deprivation of sleep, restricted lawyer's visits.

6. Yin Xu'an,[10] HRD - Picking quarrels and stirring up troubles (PQST) – no bail - 3½-year imprisonment, serving sentence
   - Activism in support of detained human rights defenders
   - 28 July 2015: Detained.
   - 26 September 2015: Formally arrested.
   - 16 March 2016: Indicted.
   - 13 September 2016: Tried.
   - 27 May 2017: Convicted.

   Beaten, first visit allowed on 10 May 2016, requires medical attention.

7. Wang Fang,[11] HRD - PQST – no bail - 3-year imprisonment, serving sentence
   - Advocacy for detained human rights defenders
   - 25 July 2015: Detained.
   - 14 September 2015: Formally arrested.
   - 27 December 2016: Indicted.
   - 10 February 2017: Tried.
   - 18 July 2017: Convicted.

   Requires treatment for critical medical condition (cancer), lawyer's visits restricted.

8. Xie Yang,[12] Lawyer - ISOSP – no bail - no prison term
   - Represented pro democracy advocates, Christians and land grabbing opponents.
   - 11 July 2015: Detained.
   - 12 July 2015: RSDP for 6-months.
   - 8 January 2016: Formally arrested.
   - 16 December 2016: Indicted.
   - 8 May-2017: Tried and released on bail.
   - 26 December 2017: Convicted (no further punishment).

   Enforced disappearance, beaten until unconscious and requiring hospitalization, first visit allowed on 21 November 2016 (after 16 months in custody).

9. Li Heping,[13] Lawyer - SOSP – no bail - 3-year imprisonment with 4-year suspension
   - Defended dissidents, human rights lawyers, Christians and Falun Gong practitioners facing prosecution.
   - 10 July 2015: Detained.
   - RSDP for 6 months.
   - January 2016: Formally arrested.
   - 5 December 2016: Indicted.
   - 25 April 2017: Tried.
   - 28 April 2017: Convicted.

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10 Yin Xu'an Chinese Human Rights Defenders, Submission to UN on Wu Gan, Wang Fang, and Yin Xu'an, 17 April 2018, https://www.nchrd.org/2018/04/submission-to-un-on-wu-gan-wang-fang-and-yin-xuan-april-17-2018/

11 *Ibid.* Chinese Human Rights Defenders, Wang Fang, August 2016, https://www.nchrd.org/2016/08/wang-fang/

12 *Ibid.*, Front Line Defenders, Xie Yang, HRD, Lawyer, 27 December 2017, https://www.frontlinedefenders.org/en/profile/xie-yang

13 Chinese Human Rights Defenders, Communiqué Alleging Torture of Chinese lawyer Li Heping, July 2017, https://www.nchrd.org/2017/08/submission-to-un-on-li-heping-july-2017/

- May 2017: released in "emaciated, unrecognizable" condition.

Enforced disappearance, handcuffed and shackled continuously for a month, tortured, no lawyer visits.

China's practices and international law obligations

Politically-motivated criminal charges:
These and other HRDs are prosecuted solely for exercising protected rights to engage in peaceful human rights advocacy. They face overbroad charges that violate notice and certainty requirements, preclude both avoidance through foreknowledge and defense, and make convictions virtually certain.

Torture and other Cruel, Inhuman or Degrading Treatment:
At least 15 HRDs arrested during the 709 Crackdown have been tortured. More cases of torture are suspected. Censorship and the absence of independent investigations blocks verification. Since ratifying UNCAT, China has adopted laws prohibiting torture and ill-treatment of detainees. However, in 2016, the UN Committee against Torture (CAT) expressed concern "over consistent reports indicating that the practice of torture and ill-treatment is still deeply entrenched in the criminal justice system."[14]

Residential Surveillance at the Designated Place:
RSDP was created by a 2012 amendment to the Criminal Procedure Law (CPL) as a form of detention for investigating crimes of "endangering national security, terrorist activities or especially serious bribery cases." Article 73 of the CPL purports to allow arrest without warrant and detention in undisclosed places outside regulated detention facilities for an initial period of six months with a possible six month extension. Article 73 allows interrogation and treatment unrestricted by rules of regular detention facilities and public scrutiny. Communications with counsel or others is prohibited without investigators' permission and identification papers are confiscated to restrict movements. During the 709 Crackdown at least 27 HRDs have been subjected to RSDP confinement, jailed in small rooms in secret locations, and held incommunicado without access to lawyers or judicial oversight. On sentencing, no credit for RSDP detention is allowed. In 2016, the CAT expressed "grave concern" that "these provisions, together with the possibility of refusing access to a lawyer… may amount to incommunicado detention in secret places, putting detainees at a high risk of torture or ill-treatment."[15]

Pre-trial Detention:
The CPL allows up to 8 months detention prior to charges being laid and an additional 6 months in RSDP detention, a total of 14 months. Access to counsel is denied or restricted during investigation of crimes alleged to endanger state security (Article 37). During the 709 Crackdown many HRDs were detained for unreasonably long periods without access to judicial oversight or counsel prior to being charged.

Judicial Independence:
The Chief Justice of China, Zhou Qiang, opens each annual report to the National People's Congress by stating that the Supreme Court of China is under the leadership of the Party Central. On 14 January 2017, the Chief Justice urged China to fight against "Western Judicial Independence" at a national meeting of chief justices of higher courts. Without access to independent, competent and impartial tribunals, HRDs prosecuted for engaging in lawful human rights advocacy and the peaceful exercise of rights to expression, assembly and association, are automatically convicted and sentenced. Such detentions, prosecutions and trials violate China's international human rights law obligations arising from customary international law, membership in the UN, Council, and the UDHR, ICCPR and UNCAT.

Conclusion

14 UN Committee Against Torture, Concluding observations on the fifth periodic report of China, CAT/C/CHN/CO/5, 3 February 2016, para 20, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/CHN/CO/5&Lang=En

15 Ibid., para 14

LRWC asks Council to make the aforementioned recommendations urging China to effectively protect the rights of HRDs and insist that China fulfil its Council membership obligation to "uphold the highest standards in the promotion and protection of human rights."16

16 UN General Assembly, Human Rights Council : resolution / adopted by the General Assembly, 3 April 2006, A/RES/60/251, available at: http://www.refworld.org/docid/453814814.html